

In the United States District Court  
for the Southern District of Texas  
Corpus Christi Division

Jason Fasching,

*Plaintiff,*

v.

Keon V. Avant and Colonial Freight  
Systems, Inc.,

*Defendants.*

Civil Action No.2:17-cv-248

Jury Demanded

**Defendants' Notice of Removal and Demand for Jury Trial**

To the Honorable United States District Judge:

Come now, Defendants Keon V. Avant and Colonial Freight Systems, Inc., and files this their *Notice of Removal and Demand for Jury Trial*. In support, the following is provided:

**Introduction**

Plaintiff Jason Fasching ("Plaintiff") filed his state court action against defendants in Kleberg County, Texas on May 17, 2017.<sup>1</sup> The case was docketed as Cause No. 17-270-D; *Jason Fasching v. Keon V. Avant and Colonial Freight Systems, Inc.*; in the 105th Judicial District Court of Kleberg County, Texas. Plaintiff's claims against defendants sound in negligence and wrongful death.<sup>2</sup>

This claim relates to a motor vehicle accident occurring on or about May 27, 2015 near Kingsville, Texas. Plaintiff alleges Defendant Keon V. Avant was driving a tractor-trailer owned by his employer, Defendant Colonial Freight Systems, Inc., when the truck collided with a vehicle owned and operated by plaintiff's mother, Helen Cordaway, at the intersection of Highway 77 and FM 1717. As a result of the collision, Ms. Cordaway allegedly sustained significant personal injury resulting in her death.

Plaintiff seeks damages for past and future mental anguish, past and future grief and bereavement, past and future loss of companionship and society,

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<sup>1</sup> See Exhibit B-1, Plaintiff's Original Petition.

<sup>2</sup> *Id.* at ¶¶ 12 - 15.

past and future loss of financial contributions, past and future loss of services, past and future loss of advice, loss of inheritance, medical expenses, and funeral and burial expenses. Plaintiff claims damages in excess of \$1,000,000.<sup>3</sup>

On or about June 27, 2017, Defendant Colonial Freight Systems, Inc. was served with a copy of Plaintiff's Original Petition and citation through the Texas Department of Transportation. Defendant Keon V. Avant was served with a copy of Plaintiff's Original Petition and citation on or about June 27, 2017.

Defendants' Notice of Removal is timely as it was filed within thirty (30) days of when Defendants were served.<sup>4</sup> Defendants' Notice of Removal is timely as it is filed within thirty (30) days of when it was first ascertainable that this case could be removed based upon diversity jurisdiction.<sup>5</sup> The one year deadline on removal under 28 U.S.C. 1446(c) has not elapsed.

### **The Parties**

Plaintiff, Jason Fasching, is a citizen of Mexico, Missouri.<sup>6</sup>

Defendant, Keon V. Avant, is citizen of Maben, Mississippi.<sup>7</sup>

Defendant, Colonial Freight Systems, Inc., is foreign corporation incorporated under the laws of the State of Alabama, with its principal place of business in Knoxville, Tennessee.<sup>8</sup> It is an Alabama citizen.

### **Basis for Removal**

#### *a. Standard for Removal*

Pursuant to 28 U.S.C § 1441, Defendants Keon V. Avant and Colonial Freight Systems, Inc. removes this action to the United States Southern District Court-Corpus Christi Division. In support of this Notice, defendants show that there is complete diversity of citizenship between plaintiff and defendants because plaintiff and defendants are citizens of different states,

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<sup>3</sup> *Id.* at ¶ 1.

<sup>4</sup> *See* 28 U.S.C. 1446(b)(1).

<sup>5</sup> *See* 28 U.S.C. 1446(b)(3).

<sup>6</sup> Ex. B-1 at ¶ 3.

<sup>7</sup> *Id.* at ¶ 4.

<sup>8</sup> *Id.* at ¶ 5.

and the amount in controversy exceeds \$75,000.00. Removal is appropriate because it has been sought within thirty (30) days of defendant first ascertaining that this suit was removable, and it has been less than one year since this action was originally commenced.<sup>9</sup>

b. *Diversity of Citizenship*

Diversity jurisdiction depends upon a showing of complete diversity, which means that none of the plaintiffs may be a citizen of the same state as one of the defendants.<sup>10</sup> A corporate entity is deemed to be a citizen of both the foreign state in which it is incorporated as well as the location where it maintains its principal place of business.<sup>11</sup>

As of the date of filing of this action, and at all times thereafter, up to and including the present, Plaintiff Jason Fasching is a citizen of the State of Missouri.<sup>12</sup> Defendant Keon V. Avant is a citizen of the State of Mississippi.<sup>13</sup> Defendant Colonial Freight Systems, Inc. is a corporation incorporated in the State of Alabama, with its principal place of business in Knoxville, Tennessee.<sup>14</sup> Accordingly, complete diversity of citizenship exists between plaintiff and defendants.

c. *Amount in Controversy*

Removal is additionally appropriate under diversity jurisdiction as the amount in controversy, exclusive of interest and costs, exceeds \$75,000.

Plaintiff's Original Petition specifically alleges that "...Plaintiff seeks monetary relief over \$1,000,000...."<sup>15</sup>

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<sup>9</sup> See 28 U.S.C. § 1446(b); see also *McCrary v. Kan. City S. RR.*, 121 F. Supp.2d 566, 570 (E.D. Tex. 2000) ("[T]he removal period does not begin to run until the out of state defendant actually is served and not when the Secretary of State receives the process."); see also *Monterey Mushrooms, Inc. v. Hall*, 14 F. Supp.2d 988, 991 (S.D. Tex. 1998) (when service is effected on a statutory agent, the removal period begins when the defendant actually receives the process, not when the statutory agent receives process.).

<sup>10</sup> See *Whalen v. Carter*, 954 F.2d 1087, 1974 (5<sup>th</sup> Cir. 1992).

<sup>11</sup> See 28 U.S.C. § 1332(c)(1); *Mullins v. Test America, Inc.*, 564 F.3d 386, 397 n.6 (5<sup>th</sup> Cir. 2009).

<sup>12</sup> Ex. B-1 at ¶ 3.

<sup>13</sup> *Id.* at ¶ 4.

<sup>14</sup> *Id.* at ¶ 5.

<sup>15</sup> *Id.* at ¶ 2.

### **FRCP Rule 38 Jury Demand**

A jury trial is demanded on all issues presented in this case.

### **Required Documents**

Pursuant to 28 U.S.C § 1446(a) and Rule 81 of the Local Civil Rules for the Southern District of Texas, defendants attach hereto copies of all pleadings, process, orders, and other filings in the State Court Action as well as the State Court Action's docket sheet. The pleadings, process, orders, other filings, and docket sheet from the State Court Action are identified in the Index of Matters Being Filed with Removal which appears as Exhibit A.

### **Required Notice**

Pursuant to 28 U.S.C. § 1446(d), defendants will promptly provide notice to all adverse parties and will file a copy of the Notice of Removal with the Kleberg County District Clerk's Office.

### **Conclusion**

Wherefore, premises considered, Defendants Keon V. Avant and Colonial Freight Systems, Inc., respectfully requests that the Honorable Court remove this action to the United States District Court for the Southern District of Texas. Defendants additionally pray for such further relief, at either law or equity, to which they may prove they are justly entitled.

Respectfully submitted,

/s/Michael D. Williams

Michael D. Williams  
mwilliams@brownsims.com  
Texas Bar No. 21564330  
Federal I.D. No: 6982  
Elizabeth L. Sandoval  
esandoval@brownsims.com  
Texas Bar No. 240058095  
Federal I.D. No. 1037409  
1177 West Loop South, Tenth Floor  
Houston, Texas 77027  
713.629.1580  
713.629.5027 fax  
*Attorney in Charge for Defendants  
Keon V. Avant and Colonial Freight  
Systems, Inc.*

**Certificate of Service**

This is to certify that a true and correct copy of the foregoing document, was electronically filed with the Court and served in accordance with the Federal Rules of Civil Procedure as well as the Southern District of Texas' Local Rules via electronic filing as well as facsimile and certified mail, return receipt requested on July 18, 2017.

W. Cullen McMahon  
W. Cullen McMahon, PLLC  
12221 Merit Drive, Suite 945  
Dallas, Texas 75251  
Tel: (214) 810-4878  
Fax: (214) 810-4879  
[cullen@mcmahonlawfirm.com](mailto:cullen@mcmahonlawfirm.com)  
*Attorney for Plaintiff*

/s/Michael D. Williams  
Michael D. Williams